

The Honorable Grady J. Leupold

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

NINTENDO OF AMERICA INC., a
Washington Corporation,

Plaintiff,

V.

13 RYAN MICHAEL DALY d/b/a MODDED
HARDWARE, an individual.

Defendant.

Case No. 24-CV-00958-GJL

[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION

File Date: June 28, 2024
Trial Date: Not Set

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PERMANENT INJUNCTION
Case No. 24-CV-00958-GJL

1 **[PROPOSED] FINAL JUDGMENT AND PERMANENT INJUNCTION**

2 This matter came before the Court on the parties' Joint Stipulation for Entry of Final
 3 Judgment and Permanent Injunction, Dkt. 30.

4 The Court makes the following findings of fact:

5 1. Plaintiff Nintendo of America Inc. ("Plaintiff" or "NOA") markets and distributes
 6 electronic video game consoles, games, and accessories developed by Nintendo Co., Ltd.
 7 (together with NOA, "Nintendo"), including the Nintendo Switch console.

8 2. The Nintendo Switch console and Nintendo Switch games include technological
 9 protection measures (the "TPMs") which effectively control access to copyrighted works and
 10 protect rights of copyright owners, including NOA. NOA owns valid copyrights in works
 11 protected by the TPMs, including Nintendo games and the Nintendo Switch operating system.

12 3. Defendant Ryan Daly d/b/a ModdedHardware ("Defendant" or "Daly") has
 13 engaged in the marketing, distribution, and sale of devices that are primarily designed for the
 14 purpose of circumventing the TPMs, have limited commercially significant purpose or use other
 15 than to circumvent the TPMs, and are marketed with Defendant's knowledge for use in
 16 circumventing the TPMs.

17 4. Among the devices marketed, distributed, and sold by Defendant which
 18 circumvent Nintendo's TPMs are devices known as the "MIG Switch" and "MIG Dumper"
 19 (collectively, the "MIG Devices"). The MIG Switch is a device that circumvents the TPMs in
 20 order to enable members of the public to access and play unauthorized or pirated copies of
 21 Nintendo Switch games on the Nintendo Switch console. The MIG Dumper is a device that
 22 circumvents the TPMs in order to enable members of the public to copy Nintendo Switch game
 23 cartridges to computer hard drives or external storage devices.

24 5. Defendant also has marketed, distributed and sold (a) "mod chips" that
 25 circumvent the TPMs by enabling members of the public to install unauthorized firmware or
 26 other unauthorized software on Nintendo Switch consoles, including software that enables users
 27 to unlawfully copy and play pirated copies of Nintendo games ("Mod Chips"), (b) Nintendo

1 Switch consoles pre-installed with such mod chips (“Hacked Consoles”), and (c) services
2 whereby Defendant installed mod chips on Nintendo Switch consoles on behalf of members of
3 the public (the “Circumvention Services”). Additionally, in connection with the sale of Hacked
4 Consoles and the Circumvention Services, Defendant copied and distributed certain copyrighted
5 Nintendo games to his customers.

6 6. The marketing, distribution, and sale of the MIG Devices, Mod Chips, Hacked
7 Consoles, and Circumvention Services violate NOA’s rights under Section 1201(a)(2) and
8 1201(b)(1) of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. §§ 1201(a)(2) and
9 1201(b)(1). Additionally, the copying and distribution of Nintendo’s copyrighted games
10 constitutes copyright infringement pursuant to Section 501 of the United States Copyright Act,
11 17 U.S.C. § 501.

12 7. Defendant’s conduct has caused NOA significant and irreparable harm. For
13 example, the MIG Devices, Mod Chips, Hacked Consoles, and Circumvention Services allow
14 members of the public to create, distribute, and play pirated Nintendo games on a massive scale.
15 Thus, the MIG devices, Mod Chips, Hacked Consoles, and Circumvention Services harm NOA’s
16 goodwill, detract from NOA’s consumer base, and enable widespread illegal and difficult to
17 detect copying.

18 The Court enters judgment as follows:

19 1. Plaintiff is hereby awarded a monetary judgment against Defendant in the amount
20 of US \$2,000,000.00.

21 2. In addition, pursuant to Sections 502 and 1203 of the Copyright Act (17 U.S.C. §§
22 502, 1203), the All Writs Act (28 U.S.C. § 1651), and this Court’s inherent equitable powers, the
23 Court orders as follows:

24 a. A permanent injunction hereby is entered against Defendant enjoining him and his
25 agents, servants, employees, successors, assigns, and all those acting in privity or under
26 his control from:

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- 1 i. Taking any steps on Defendant's own behalf or assisting others in offering to the
2 public, selling, providing, marketing, advertising, promoting, distributing, or
3 otherwise trafficking in any devices whose purpose is to circumvent any
4 technological protection measures contained within Nintendo video game
5 consoles or video game software, including but not limited to devices such as
6 Mod Chips, MIG Dumpers, MIG Switches (together, "Circumvention Devices"),
7 and Nintendo video game consoles that have been modified to allow them to play
8 pirated games ("Hacked Consoles");
- 9 ii. Taking any steps on Defendant's own behalf or assisting others in offering to the
10 public, selling, providing, marketing, advertising, promoting, distributing, or
11 otherwise trafficking in any circumvention services, including but not limited to
12 services wherein Defendant modifies or assists others in modifying Nintendo
13 Switch consoles to circumvent NOA's technological protection measures or sells
14 Nintendo Switch consoles that have been so modified (together, "Circumvention
15 Services"), and any other services that target NOA, NOA's consoles, NOA's
16 technological protection measures, and/or NOA's copyrighted works;
- 17 iii. Obtaining, possessing, accessing, or using any Circumvention Devices or Hacked
18 Consoles;
- 19 iv. Assisting in any way with the creation, support, or development of any
20 Circumvention Devices or Hacked Consoles;
- 21 v. Publishing, selling, providing, or distributing any technology, documentation,
22 software code, or information used to create or assist in the creation of any
23 Circumvention Devices or Hacked Consoles;
- 24 vi. Operating, hosting, assisting, or linking to any website that is designed to provide
25 information to assist others in accessing, developing, or obtaining any
26 Circumvention Devices or Hacked Consoles;

- 1 vii. Investing or holding any financial interest in any enterprise which Defendant
2 knows or has reason to know is now, or intends in the future to be, engaged in any
3 activities that are prohibited by this Judgment;
- 4 viii. Reverse engineering, decompiling, packet editing, or otherwise manipulating
5 without authorization the Nintendo Switch console, Nintendo games, or any other
6 Nintendo product or offering, or providing assistance to any person or entity
7 engaged in such activities;
- 8 ix. Directly or indirectly infringing, or causing, enabling, facilitating, encouraging,
9 promoting, inducing, or participating in the infringement of, any of NOA's
10 copyrights or trademarks, or other intellectual property, whether now in existence
11 or hereafter created;
- 12 x. Destroying, transferring, altering, moving, returning, concealing, or in any
13 manner hiding any and all Circumvention Devices, and other devices or hardware
14 used in connection with Defendant's sale of Circumvention Devices and
15 Circumvention Services;
- 16 xi. Destroying, transferring, altering, moving, returning, concealing, or in any
17 manner hiding any and all video games, video game files, and video game
18 emulators (and any digital files comprising the same) in which NOA owns or
19 controls intellectual property rights or which relate to Nintendo consoles or video
20 games ("NOA materials") and which were used in connection with Defendant's
21 sale of Circumvention Devices and Circumvention Services;
- 22 xii. Engaging in any other violation of the Digital Millennium Copyright Act or the
23 Copyright Act, or any other federal or state law, as respects NOA and/or any
24 technological protection measures contained within Nintendo video game
25 consoles or video game software;

- 1 xiii. Effecting assignments or transfers, forming new entities or associations, or using
2 any other device for the purpose of circumventing or otherwise avoiding the
3 prohibitions set forth in subparagraphs (i)–(xii) directly above;
- 4 b. The Court further enjoins Defendant and all third parties acting in active concert and
5 participation with Defendant—including but not limited to any domain name registrars or
6 registries holding or listing any of Defendant’s websites—from supporting or facilitating
7 access to any or all domain names, URLs, or websites (including, without limitation,
8 www.moddedhardware.com), including any successor websites, chatrooms, and other
9 social media websites or apps through which Defendant trafficked in circumvention
10 devices or services that threaten Plaintiff’s technological protection measures or which
11 infringe Plaintiff’s rights under the Copyright Act.
- 12 c. The Court further orders that Defendant and his agents, servants, employees, attorneys,
13 and others acting in active concert or participation with Defendant—including but not
14 limited to any domain name registrars or registries holding or listing any of Defendant’s
15 websites: (a) surrender, and permanently cease to use, the domain name
16 www.moddedhardware.com, any variant or successor thereof controlled by Defendant,
17 and any other website or system that Defendant owns or controls, directly or indirectly,
18 that involve NOA materials; and (b) immediately transfer the domain name
19 www.moddedhardware.com, any variant or successor thereof controlled by Defendant,
20 and any other website or system that Defendant owns or controls, directly or indirectly,
21 that involve NOA materials, to Plaintiff’s control.
- 22 d. The Court further enjoins Defendant and all third parties acting in active concert and
23 participation with Defendant—including but not limited to any domain name registrars or
24 registries holding or listing any of Defendant’s websites—from supporting or facilitating
25 access to any or all domain names, URLs, and websites (including, without limitation,
26 www.moddedhardware.com), or any successor thereof, through which Defendant
27 infringes Plaintiff’s copyrights.

- e. The Court further orders, pursuant to 17 U.S.C. §§ 503 & 1203, upon NOA's selection, the seizure, impoundment, and/or destruction of all Circumvention Devices and all other electronic material or physical devices within Defendants' custody, possession, or control—including any hard drives, other electronic storage devices containing such material, or files containing such material hosted by cloud-based or other storage services—that violate NOA's rights under the DMCA or infringe copyrights owned or exclusively licensed by NOA.
 - f. This permanent injunction constitutes a binding court order, and any violations of this order by Defendant will subject him to the full scope of this Court's contempt authority, including punitive, coercive, and monetary sanctions.
 - g. The Court shall maintain continuing jurisdiction over this action for the purpose of enforcing this Final Judgment and Permanent Injunction. Plaintiff is not required to post any bond or security in connection with this Stipulated Order and Permanent Injunction, and Defendant has permanently, irrevocably, and fully waived any right to request a bond or security.

IT IS FURTHER ORDERED that Judgment be entered in this matter in accordance with the terms set forth above, and that the clerk be, and hereby is, directed to close this matter.

IT IS SO ORDERED.

**GRADY J. LEUPOLD
UNITED STATES MAGISTRATE JUDGE**